

ORDINANCE NO. 28-05

**AN ORDINANCE TO REPEAL CHAPTER 64
ENTITLED HEALTH AND SANITATION AND
REENACT IT WITH THE TITLE SMOKING IN
PUBLIC PLACES AND PLACES OF EMPLOYMENT**

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, respiratory disease, and lung cancer;

WHEREAS, at special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;

WHEREAS, there is a clear and present health and safety risk posed to all employees and patrons of facilities owned and operated in the City of West Lafayette by the smoking of cigarettes, cigars, pipes or any other tobacco product;

WHEREAS, in creating certain exceptions in this chapter, the Common Council and the City of West Lafayette have balanced the needs and desires of businesses and employers, as well as the needs and desires of smokers and non-smokers;

WHEREAS, the City of West Lafayette Common Council finds and declares that the purposes of this chapter are: 1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and 2) to guarantee the ability of nonsmokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke; and

WHEREAS, the existing West Lafayette City Code chapter 64 contains various provisions related to a city board of health and department of health that are obsolete because of the enactment of a state law transferring those functions to a county board and department;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE that:

Section 1. The existing chapter 64 of the West Lafayette City Code shall be repealed.

Section 2. A new chapter 64 of the West Lafayette City Code is enacted as follows:

Article I. Smoking in Public Places and Places of Employment

Sec. 64.01. Definitions.

The following words and phrases, whenever used in this, shall be construed as defined in this section:

“Bar” means any building, room or area used primarily for the sale of alcoholic beverages for consumption by guests on the premises and in which the sale of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages.

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

“Employee” means any person who is employed by any employer for direct or indirect monetary wages or profit, including those employed full-time, part-time, on a temporary basis, or by contract through a third party.

“Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

“Enclosed Area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

“Place of Employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a child care, adult day care or health care facility:

“Private Club” means a facility:

- (a) owned or operated by an association or corporation, which shall:
 - (1) not be operated for pecuniary gain; and
 - (2) consist of a membership:
 - (A) formed as a lodge, local chapter, or corresponding unit of a fraternal order recognized on a national basis; or
 - (B) comprised of persons who have served in the armed forces of the United States; or
 - (C) formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self governance by the membership are distinguishing characteristics; and
- (b) where entry into, and use of the facility is restricted to members and guests of members.

“Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production

and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a “public place.”

“Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

“Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term does not include retail stores where food or beverages are sold for consumption on the premises or where an area has been set aside on the premises for customers to consume food or beverages.

“Tobacco bars” are establishments that sell or rent tobacco products and devices and derive more than 25% of their income from these sales or rentals.

“Service Line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

“Sports Arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Sec. 64.02. Application to City-Owned Facilities.

All enclosed facilities owned by the City of West Lafayette shall be subject to the provisions of this chapter, including city vehicles, whether or not they are occupied by more than one person.

Sec. 64.03. Prohibition of Smoking in Public Places.

- (a) Smoking shall be prohibited in the following public places and other public places similarly situated, including, but not limited to, the following areas:
 - (1) Elevators.
 - (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas.
 - (3) Buses, taxicabs, and other means of public transit under the authority of the City of West Lafayette, and ticket, boarding, and waiting areas of public transit depots.
 - (4) Service lines.
 - (5) Retail stores.
 - (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public.
 - (7) Restaurants and bars.

- (8) Public areas of aquariums, galleries, libraries, indoor areas of zoos and museums.
- (9) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a theatrical production.
- (10) Sports arenas and convention halls, including bowling facilities.
- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.
- (12) Hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (14) Polling places.
- (15) Places of employment.
- (16) The following outdoor areas:
 - (A) Smoking is limited to 25% of seating in outdoor dining areas of restaurants and bars,
 - (B) Within courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers,
- (17) Private functions in other public places like bars, restaurants, hotels, and motels.

(b) Notwithstanding any other provisions of this section, any owner operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Sec. 64.04. Policies Regarding Smoking in Places of Employment.

- (a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.
- (b) The smoking policy shall be communicated to all employees.
- (c) Each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums,

classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles with more than one occupant, and all other enclosed facilities.

All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 64.05. Reasonable Distance.

Smoking shall occur at a distance not closer than 15 feet from a ventilation system or a public entrance to any area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means. It shall be a violation for smoke to be detected in any areas where smoking is prohibited.

Sec. 64.06. Where Smoking Not Regulated.

- (a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
 - (1) Private residences, except when used as a child care, adult day care or health care facility.
 - (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated and so long as the smoking does not directly affect any non-smoking rooms and areas of the building. Once designated, the status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.
 - (3) Retail tobacco stores as defined in section 64.01, so long as the smoking does not directly affect smoking prohibited areas.
 - (4) Private clubs as defined in section 64.01. However, smoking shall be prohibited when the premises is temporarily used by the general public for a particular function.
 - (5) Tobacco bars as defined in section 64.01, so long as the smoking does not directly affect smoking prohibited areas.
 - (6) Outdoor areas of places of employment.
- (b) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Sec. 64.07. Posting of Signs—Removing of Paraphernalia.

- (a) “No Smoking” signs or the international No Smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this chapter, by the owner, operator, manager or other person having control of such building or other area.

- (b) Every public place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) Any public place or place of employment exempted from this chapter shall clearly and conspicuously post the following sign at every entrance: "Warning. Tobacco smoke may be present."
- (d) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager or other person having control of such area.

Sec. 64.08. Enforcement.

- (a) The city shall seek to obtain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings, where appropriate
- (b) Enforcement of this chapter shall be implemented by the Mayor's Office, or designee(s).
- (c) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the department or positions designated by the Mayor's Office.
- (d) Upon finding that any provision of this chapter has been violated, the enforcement designee(s) shall issue a Notice of Violation (NOV) to the person(s) responsible for the violation. The NOV shall be in writing and shall be served upon the person(s) responsible for the violation by one or more of the following methods: delivery in person, certified or first class mail. The NOV shall state:
 - (1) The location of the violation;
 - (2) The nature of the violation;
 - (3) The fine assessed for the violation;
 - (4) That the fine is paid at the city Clerk's office; and
 - (5) That the fine may be contested in the West Lafayette City Court.

Sec. 64.09. Violations and Penalties.

- (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.
- (b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to knowingly or willfully allow smoking to occur where prohibited by this chapter. It is a defense to this section, if the foregoing persons or their employees act in a reasonable and timely manner to personally inform the violator of the prohibition and request that he or she refrain from smoking.
- (c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

- (d) (1) A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine of fifty dollars (\$50).
- (2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the revisions of this chapter shall be guilty of an infraction, punishable by:
 - (A) A fine of one fifty dollars (\$50) for the first violation.
 - (B) A fine of one hundred dollars (\$100) for the second violation at the same place.
 - (C) A fine of two hundred fifty dollars (\$250) for each additional violation at the same place.
- (3) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.
- (e) All penalties shall be processed through the ordinance violations bureau established by section 20.27 of the West Lafayette city code. If, after multiple violations by the same person or at the same business, the city legal and law enforcement departments have reason to believe that the fines will not be effective in enforcing this chapter, then the city legal department shall be empowered to seek any other remedies provided by law.

Sec. 64.10. Public Education.

The City may engage in programs to explain and clarify, the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

Sec. 64.11. Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 64.12. Severability.

If any sections, sentence or provision of this chapter, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter we declare to be severable.

Section 3. Effective Date. The enforcement provisions of this ordinance shall take effect on July 1, 2006 thereby allowing a six month phase-in period for all public places and places of employment.

INTRODUCED AND FILED ON _____, 2005.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA ON _____, 2005, HAVING BEEN PASSED BY A VOTE OF ____ IN FAVOR AND ____ OPPOSED.

Presiding Officer

Attested:

Clerk-Treasurer

PRESENTED BY ME TO THE MAYOR OF THE CITY OF WEST LAFAYETTE, INDIANA _____, 2005, AT THE HOUR OF _____ .M.

Clerk-Treasurer

THIS ORDINANCE APPROVED AND SIGNED BY ME ON _____, 2005, AT THE HOUR OF _____ .M.

Jan H. Mills, Mayor

Attested:

Clerk-Treasurer